

EXHIBIT 61

1 UNITED STATES DISTRICT COURT
2 For the District of New Jersey (Newark)
3 Case No. 2:06-CV-05072(JLL)(CCC)

4 CHARLES T. McNAIR, THEODORE AUSTIN, DANIELLE DEMETRIOU,
5 STEVEN NOVAK, ROD BARE, USHMA DESAI and JULIE DYNKO on
6 behalf of themsleves and all others similarly situated,
7 Plaintiffs,

8 vs.

9 SYNAPSE GROUP, INC,
10 Defendants.

11 -----

12 DEPOSITION OF:

13 TRACY DART

14 TRANSCRIPT OF DEPOSITION, taken by and before STEFANIE
15 TOWNS, a Notary Public, Certified Shorthand Reporter of
16 the State of New Jersey, taken at the offices of KELLEY,
17 DRYE & WARREN, LLP., 400 Atlantic Street, Stamford,
18 Connecticut, New Jersey, on Thursday, May 8th, 2008,
19 commencing at 2:00 p.m.

20 STEFANIE TOWNS

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32

1 Q. Okay.

2 A. But I don't know for sure.

3 Q. All right. Do you know if there was any
4 language regarding automatic renewals or continuous
5 service with this offer?

6 A. Yes, there would be.

7 Q. And what would that language provide?

8 A. Price and term and issues and continuous
9 service.

10 Q. When you say "term" what do you mean?

11 A. The number of subscriptions that someone
12 will get during the term that they're paying for.

13 Q. Okay. And in having also the term of
14 continuous service in it, what did it say about that?

15 A. In what respect? Could you just --

16 Q. Well, that's what I'm asking is that
17 you're saying that it would have said something about
18 continuous service. I'm asking you what would it have
19 said?

20 A. It would have said that your magazines
21 come with continuous service.

22 Q. So it would have some similar language to
23 the offers that we've previously seen?

24 A. Correct.

25 Q. All right. And 723, what is that?
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1 A. This is another offer that Biz Rate
2 presented, which has a Synapse offer. But it also
3 includes other partner offers as well.

4 Q. All right. And I think that's all the
5 documents that you identified that you recognize. Is
6 that correct?

7 A. Mm-hmm.

8 Q. In this packet or in this exhibit?

9 A. Correct.

10 MR. GREEN: All right. If you could give
11 us a minute?

12 MR. GILBERTSEN: Sure.

13 (Whereupon, an off the record
14 discussion is held.)

15 Q. Do you know if in August of 2005 there
16 were on line offers for subscriptions at a cost of \$2
17 for twelve months?

18 A. Probably. It is one of our offers.

19 Q. Let me represent to you that one of our
20 plaintiffs in this case alleges that in August of 2005
21 he, in fact, was presented with an on line offer during
22 that period of time for, four magazines at an annual
23 subscription price of \$2 each.

24 A. Okay.

25 Q. You don't have that here and I was
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1 wondering if you had looked for such an offer?

2 A. I was given a list and I provided
3 everything that I could find so --

4 MR. GILBERTSEN: Let the record reflect
5 that when Mr. Green says here, he's referring to Exhibit
6 S-1. Just to clarify, in all of the on line offers that
7 you're involved with.

8 THE WITNESS: Mm-hmm.

9 Q. Well, let me back up. Actually, let's
10 look at 703, if you could. It's bates stamped SYN
11 140703.

12 A. Okay.

13 Q. Choose three months free and choose number
14 of magazine titles. And then it says it gives a rate
15 for a certain number of issues. And then it says in the
16 paragraph at the bottom there you will be charged the
17 annual rate shown for a total of 15 months of issues.
18 Just want to clarify exactly what we're dealing with
19 there is that, are you getting a total of 15 issues --
20 sorry 15 months of issues for the -- does it include the
21 three months free and the other issues that are cited
22 here that 15 months?

23 A. It's indicating that you will get 15
24 months of issues, months of issues. Not number of
25 issues included in the period that you're paying for.

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1 So you'll get your three free months and he'll -- and ³⁵
2 you'll get your twelve months.

3 Q. Okay. All right. Then the prices here
4 that are listed, for instance, sorry, I'm just having a
5 really hard time reading this. Let's do Rolling Stone.
6 I think that's the one that's easiest to read. Three
7 months free under the Rolling Stone magazine?

8 A. Mm-hmm.

9 Q. And then it says \$15/ 29 issues. Is that
10 what it says?

11 A. Either 29 or 28.

12 Q. Okay.

13 A. I don't know.

14 Q. All right. So that \$15 for the 28 issues,
15 I'll use your amount.

16 A. Mm-hmm.

17 Q. That would be for the twelve months that
18 you will be receiving issues for after the three months
19 free?

20 A. It actually included the number of issues
21 you would get in that 15 month period.

22 Q. Okay. So then the price is for really 15
23 month's worth of issues. That's not how you do it. I'm
24 sorry. I don't want to mischaracterize it. Essentially
25 the way the offer reads is you're getting 23 months free

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1 of magazines?

2 A. Mm-hmm.

3 Q. Right?

4 A. Yes.

5 Q. In that particular issuance, do you know
6 how many issues you're getting in that three months?

7 A. I believe Rolling Stone comes out more
8 than once a month. So I don't know how many you would
9 actually get before your introductory period is over,
10 before your free period is over.

11 Q. But you're getting the same amount of
12 issues per month during the free period as you do during
13 the period where you're paying?

14 A. Correct.

15 Q. And the amount that you are paying that's
16 listed here, you have to agree to that -- to pay that
17 after you get a notification, correct?

18 MR. GILBERTSEN: Object on vagueness
19 grounds.

20 A. Could you repeat that in a different way,
21 please?

22 Q. Prior to you being charged --

23 A. Yes.

24 Q. -- for that amount, that \$15 in the
25 Rolling stone example.

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1 A. Mm-hmm.

2 Q. You are notified that you will be charged

3 --

4 A. Yes.

5 Q. -- and you have to not cancel in order to
6 receive those issues, correct?

7 A. I mean you have agreed to receive the
8 issues. And if you don't cancel, you will be charged
9 for the remainder of the year.

10 Q. Okay. But prior to that charge, you
11 receive a notification that you are going to be charged,
12 correct?

13 A. Yes.

14 MR. GILBERTSEN: I was going to object on
15 the grounds that it's outside the 30(6)(b) topic.

16 Q. All right. And then in this offer it also
17 talks about as an additional benefit your magazines will
18 continue annually, right, it says that?

19 A. Yes.

20 Q. And it says towards the end of each
21 subscription period you will receive a reminder notice
22 and you authorize your account to be charged the rate on
23 the notice for the next year of issues until you tell us
24 to stop, right, it says that?

25 A. Yes.

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1 Q. Is that what you would call automatic
2 renewal?

3 A. Yes.

4 Q. And is that also continuous service?

5 A. Yes.

6 Q. And the rate for that automatic renewal is
7 not listed in this offer, correct?

8 MR. GILBERTSEN: Object to the extent that
9 you may be mischaracterizing your prior testimony and
10 the document, but you may answer.

11 A. It's listed above.

12 Q. Well, I don't -- all right. The rate,
13 let's just make sure we're talking about the same thing
14 because I don't think it is. But I don't want to --
15 obviously, if I'm wrong, I want to be clear to let me
16 know that. It's saying, to repeat, it says towards the
17 end of each subscription period, you will receive a
18 reminder notice and you authorize your account to be
19 charged the rate on the notice for the next year of
20 issues. My question is, that rate that I just referred
21 to is not in this offer, correct?

22 A. The rate you will be charged for your
23 first year of issues is on this creative. For
24 subsequent years it could possibly be different. It
25 could be the same. It could less.

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